

From: "Wright, Ann L CIV USARMY CEHQ \(\USA\)" <Ann.L.Wright@usace.army.mil>  
To: "Mednick, Richard" <Mednick.Richard@epa.gov>  
jeffrey.t.matson@usace.army.mil  
"Level, John A \(\ATG\)" <john.level@atg.wa.gov>  
Gary.L.Vrooman@state.or.us  
Date: 5/19/2022 9:44:49 AM  
Subject: RE: Bradford Island FFA Negotiations

---

Richard,

The FFA serves the specific purpose of allowing the lead Federal agency and EPA to comply with CERCLA § 120(e)(4) and to facilitate the participation of the States in compliance with § 121(f). It is important to the relationship of the FFA parties to be able to have frank and open discussions and exchanges of ideas and potentially to try to resolve disputes in a process with the FFA parties. This is not the same as the community relations process or the government to government consultation process between a Federal agency and an Indian Tribe. It is also essential that USACE meet all the community relations requirements of the NCP, which we propose to do even beyond the NCP requirements through the proposed CAG and other public involvement opportunities. USACE cannot chose one Tribe over another or allow some interested individuals or community groups greater access to data and reports than another. Documents exchanged under the FFA Consultation process are not considered by USACE to be released and available to the public until after the FFA parties have had an opportunity to go through the Consultation process. At that point the Yakama Nation and all other interested Tribes, individuals and community groups will have an opportunity to review them and may submit comments as they wish and USACE will give meaningful consideration to all of them. In addition, if there is sufficient interest and the CAG is established, there will be ongoing discussions with the CAG participants, and possibly a Tribal subcommittee if there is interest in this, that will provide opportunities before reports are drafted to discuss topics that are being evaluated during the CERCLA remedy selection process.

This is discussed in more detail in my response below. The FFA language will be negotiated later, however please keep in mind the FFA is intended to describe the process to comply with § 120(e).

FYSA, I will be out for the next two weeks and will not have access to work email. We look forward to further discussions within the schedule we discussed on our last call, with the next call to be on 21 June. I hope you all have a happy and safe Memorial Day weekend and start to your summer.

VR, Ann

Ann L. Wright

Attorney

Office of the Chief Counsel

U.S. Army Corps of Engineers

402-996-3880

Wk Cell 402-860-2465

---

**From:** Mednick, Richard <Mednick.Richard@epa.gov>

**Sent:** Wednesday, May 18, 2022 7:30 PM

**To:** Wright, Ann L CIV USARMY CEHQ (USA) <Ann.L.Wright@usace.army.mil>; Matson, Jeffrey T CIV USARMY CENWP (USA) <Jeffrey.T.Matson@usace.army.mil>; Level, John A (ATG) <john.level@atg.wa.gov>; Gary.L.Vrooman@state.or.us

**Subject:** [URL Verdict: Neutral][Non-DoD Source] RE: Bradford Island FFA Negotiations

Ann, Jeff, John, and Gary,

The Yakama Nation has expressed a strong interest to EPA in having an opportunity to review and comment on draft technical documents and the site management plan produced under the FFA. This interest has been explained to be the result of impacts on the health and well-being of Tribal members who rely on fishing from contaminated areas associated with Bradford Island. It is important to EPA that we accommodate that interest if at all possible under the FFA. To that

end, Section 120(f) of CERCLA, 42 U.S.C. § 9621(f) provides that EPA and USACE “shall afford to relevant...local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans.” I am proposing that we rely on that section of CERCLA to modify the technical review committee provision in FFA in such a way as to provide the Yakama Nation the opportunity to review and comment on draft documents and plans. The parties to the FFA would not be obligated to incorporate the input from the Yakima Nation but rather to consider it as part of the document and plan creation process.

I am interested to know whether USACE and the States support such a concept.

Thank you,

Richard

Richard Mednick  
Associate Regional Counsel  
Regional Judicial Officer  
U.S. EPA I Region 10  
1200 Sixth Avenue  
Suite 155, M/S 11 C07  
Seattle, WA 98101  
(206) 553-1797

---

**From:** Wright, Ann L CIV USARMY CEHQ (USA) <[Ann.L.Wright@usace.army.mil](mailto:Ann.L.Wright@usace.army.mil)>  
**Sent:** Wednesday, May 18, 2022 8:28 AM  
**To:** Mednick, Richard <[Mednick.Richard@epa.gov](mailto:Mednick.Richard@epa.gov)>; [jeffrey.t.matson@usace.army.mil](mailto:jeffrey.t.matson@usace.army.mil); Level, John A (ATG) <[john.level@atg.wa.gov](mailto:john.level@atg.wa.gov)>; [Gary.L.Vrooman@state.or.us](mailto:Gary.L.Vrooman@state.or.us)  
**Subject:** RE: Bradford Island FFA Negotiations

CONFIDENTIAL NEGOTIATION DOCUMENT

Richard,

Thank you for organizing our first discussion of the Bradford Island FFA and setting up the next meeting on 21 June. We in USACE are working hard on moving forward with this process, sorting out some of the unique complications of this facility, and maintaining the progress already made on response actions at Bradford Island, while adhering to the EPA /DoD template FFA and underlying requirements of CERCLA § 120(e)(4).

Regarding the TRC provision of the Fort Eustis FFA, we are not prepared to discuss the text of this paragraph of a Bradford Island FFA at this time, however we can generally respond to the issue you have raised. As we discussed, 10 U.S.C. § 2705 is part of the DERP chapter of Title 10 that does not apply directly to Civil Works, however the TRC and Restoration Advisory Board (RAB) provisions of § 2705 and the DoD RAB regulations at 32 CFR Part 202 are useful to establishing a robust public involvement process at a CERCLA site. The RAB provision at 10 U.S.C. § 2705(d) was added to this statute at DoD's request because the TRC concept, which requires one public representative from the community, was insufficient to allow broader involvement by interested community members and raised concerns with FACA compliance. The RAB allows a broader section of interested community members, local officials, and groups, including Indian Tribes, to have a meaningful role in the discussions that help to inform our agencies as we work through the CERCLA remedy selection process. Neither the TRC nor the RAB allows the lead agency to engage with one group to the exclusion of others or to keep the information provided to one group out of the public record for all to review. USACE is considering the RAB regulations, as well as EPA guidance, in the outreach under way to see if there is sufficient interest for a community advisory group (CAG). If the interested Tribes would like to engage through the CAG, we could consider a Tribal subcommittee that would allow meetings to discuss their specific interests, with the understanding the documents related to such meetings would be made available to the public. USACE recognizes the Tribes, including but

not limited to the Yakama Nation, have a sincere interest in the CERCLA process at Bradford Island and we intend to continue to engage with them as part of the community relations process required by CERCLA and the NCP.

CERCLA § 120(f) speaks to state and local official involvement in the “planning and selection of the remedial action plan.” It cross-references § 121 of CERCLA for State involvement, particularly § 121(f). The NCP provisions on community relations in 40 CFR § 300.430 flesh out the requirements for community relations and involvement of the public, including local officials, in the planning and selection of a remedy. The NCP in § 300.515 provides for the involvement of States in remedial response. USACE intends to meet these CERCLA and NCP public and state involvement requirements, and will include the Tribes fully in the community relations process.

CERCLA addresses Indian Tribes specifically under § 126 (notification of releases; consultation on RAs; access to info; health authorities; and roles under NCP). The NCP provides that, to be afforded substantially the same treatment as states under § 104, the tribe must, among other factors, have jurisdiction over the federal facility. 40 CFR § 300.515(b). While we recognize the Tribes that use the Columbia River have a real and substantial interest in the CERCLA response actions at Bradford Island, none of them has jurisdiction over the real property at Bradford Island. Nevertheless, USACE does intend to continue to engage with the Tribes and to move forward with robust community relations with interested members of the public. All documents in the administrative record will be available to the Tribes and community members and we want their comments on remedial action planning. The FFA formal consultation process would not include agencies not party to the FFA, however all primary and secondary documents will be made available to the Tribes and the public once the FFA parties have gone through that process.

We can discuss the community relations provision of the FFA further when we get to that part of our discussions.

VR, Ann  
Ann L. Wright  
Attorney  
Office of the Chief Counsel  
U.S. Army Corps of Engineers  
402-996-3880  
Wk Cell 402-860-2465

Privileged Attorney Communication  
Do Not Release, Copy or Forward Without Permission

---

**From:** Mednick, Richard <[Mednick.Richard@epa.gov](mailto:Mednick.Richard@epa.gov)>  
**Sent:** Tuesday, May 17, 2022 2:44 PM  
**To:** Wright, Ann L CIV USARMY CEHQ (USA) <[Ann.L.Wright@usace.army.mil](mailto:Ann.L.Wright@usace.army.mil)>; Matson, Jeffrey T CIV USARMY CENWP (USA) <[Jeffrey.T.Matson@usace.army.mil](mailto:Jeffrey.T.Matson@usace.army.mil)>; Level, John A (ATG) <[john.level@atg.wa.gov](mailto:john.level@atg.wa.gov)>; [Gary.L.Vrooman@state.or.us](mailto:Gary.L.Vrooman@state.or.us)  
**Subject:** [URL Verdict: Neutral][Non-DoD Source] Bradford Island FFA Negotiations

Ann, Jeff, John and Gary,

Thank you for participating in our inaugural negotiation session yesterday for the Bradford Island FFA. I think we made good progress and appreciate everyone's preparation and contributions.

I am confirming that our next virtual negotiation session will be on Tuesday, June 21, from 12:00 to 1:00 PM pacific time. We also discussed that the States would strive to provide a red-lined version of the draft FFA by mid-June and USACE would attempt to do the same by the second week of July.

Consistent with our discussion, I have shared the Ft Eustis FFA with counsel for the Yakama Nation and explained that, while there may be some exceptions, it is used as a general template for similar agreements between EPA and the Department of Defense. Given that, at this time, we are not planning to provide the Yakama Nation with any versions of our draft FFA for Bradford Island, having the Ft Eustis FFA and understanding its significance may allow the Yakama Nation to be better informed and prepared prior to the public comment period for the Bradford Island FFA.

Lastly, I want to follow-up on our discussion about the provisions in the draft FFA pertaining to the participation by non-parties in the review of technical documents during the course of the Bradford Island work. Within the Community Relations provisions of Section XXXIV, paragraph 34.6 contemplates the existence of a *Technical Review Committee* made up of the parties and interested non-parties. 10 USC 2705(c), which pertains to environmental restoration activities conducted by the Department of Defense, is cited as a basis for this paragraph. As I understand Ann's explanation, USACE as a civil works program is not subject to the cited law. To nonetheless maintain the concept of a technical review committee as part of the FFA, with a main emphasis on including the Yakama Nation who has expressed an interest having an opportunity to review and comment on technical documents prepared under the FFA, I am suggesting that we consider relying on Section 120(f) of CERCLA, 42 U.S.C. § 9620(f), which states as follows:

#### **f)State and local participation**

The [Administrator](#) and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with [section 9621 of this title](#).

Thank you,

Richard

[Richard Mednick](#)  
[Associate Regional Counsel](#)  
[Regional Judicial Officer](#)  
[U.S. EPA I Region 10](#)  
[1200 Sixth Avenue](#)  
[Suite 155, M/S 11 C07](#)  
[Seattle, WA 98101](#)  
[\(206\) 553-1797](#)